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2
3 UNITED STATES DISTRICT COURT FOR THE
4 WESTERN DISTRICT OF PENNSYLVANIA

5 JAMES LENEGAN,)

6 *Petitioner,*)

7 v.)

8)
9 MONICA RECKTENWALD,)

10 *Respondent.*)
11

CASE NO. 16-159 Erie

ORDER ADOPTING
REPORT AND
RECOMMENDATION

12 **I. INTRODUCTION**

13 Before the Court is the Report and Recommendation of the Honorable Susan Paradise
14 Baxter in which she recommends that this Court deny the petition for a writ of habeas corpus filed
15 by Petitioner, James Lenegan. Dkt. No. 18. Having reviewed the Report and Recommendation,
16 the objections thereto, the record of this case, as well as the relevant legal authorities, the Court
17 will adopt the Report and Recommendation. The reasons for the Court's decision follow.
18

19 **II. BACKGROUND**

20 Petitioner was arrested by federal authorities while he was serving state sentences imposed
21 by the Court of Common Pleas of Bucks and Philadelphia Counties. He was eventually convicted
22 in federal court and on July 23, 2009 the federal judge sentenced him as follows:
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24 The defendant is hereby committed to...a total term of...220 MONTHS
25 on each of Counts 25 and 26 and a term of 120 months on Count One, all
to be served concurrently. This sentence shall be served partially
concurrently with the sentence imposed on May 20, 2005, by Judge David
W. Heckler of the Bucks County Court of Common Pleas for burglary and
criminal trespass of not less than 2 1/2 years nor more than 9 years in case

1 number CP-09-CR-0007454-2004. Specifically, the within sentence shall
2 be served concurrently with the said Bucks County sentence [as] of
3 February 5, 2008.

4 Dkt. No. 16, Ex. 2 ¶ 6r and Attach. 2j. Petitioner was returned to state authorities where he satisfied
5 his state sentences. Thereafter, he was released to federal authorities to complete service of his
6 federal sentence.

7 In the instant writ of habeas corpus, Petitioner alleges that the Bureau of Prisons (“BOP”)
8 erred in calculating his federal sentences. Specifically, Petitioner argues that the BOP should have
9 calculated his federal sentence to have commenced on February 5, 2008, the date on which federal
10 authorities took custody of him pursuant to a writ of habeas corpus ad prosequendum so that he
11 could be prosecuted in federal court, as opposed to July 23, 2009, the dated on which the federal
12 court sentenced Petitioner. Dkt. No. 19 at 5. He also contends that the BOP should award him with
13 Good Conduct Time (“GCT”) based on a confinement date of February 5, 2008. Finally, he claims
14 that the federal sentencing court misapplied his guidelines under U.S.S.G. § 5G1.3, when it applied
15 subsection (c) as opposed to subsection (b).

16 In response to the petition, the BOP’s Designations and Sentence Computation Center
17 (“DSCC”) reviewed Petitioner’s federal sentence computation for accuracy. It concluded that the
18 sentence was vague because it appeared that the federal judge attempted to order prior custody
19 credit, as opposed to an adjustment or downward departure under U.S.S.C. § 5G1.3. The DSCC
20 inquired of the federal district judge who, in turn, amended the judgment to:

21 185 MONTHS on each of Counts 25, and 26 and a term of 120 months on
22 Count One, all to be served concurrently. This sentence shall be served
23 partially concurrently with the sentence imposed on May 20, 2005 by
24 Judge David W. Heckler of the Bucks County Court of Common Pleas for
25 burglary and criminal trespass of not less than 2 1/2 years nor more than 9
 years in case number CP-09-CR-0007454-2004. Specifically, the within
 sentence shall be served concurrently with the said Bucks County sentence

1 of February 5, 2008 pursuant to the provision of U.S.S.G. § 5G1.3 *(b)
2 consistent with the reasoning provided on the records of this sentence.)

3 Dkt. No. 16, Ex. 2 ¶6ee and Attach. 2p.

4 Based on the amended judgment, the BOP recalculated the Petitioner's federal sentence as
5 a 167-month and 13-day sentence, which reflected the sentence of 185 months adjusted under
6 U.S.S.G. § 5G.3(b) by 534 days (representing time served against an undischarged state sentence
7 from February 5, 2008 through July 22, 2009).

8 III. DISCUSSION

9 Petitioner argues that the Magistrate Judge erred by determining that the BOP correctly
10 calculated that his federal sentence commenced on July 23, 2009, the date that the federal judge
11 originally sentenced him, as opposed to February 5, 2008, the date that the federal authorities took
12 custody of him so that he could be tried in federal court. Petitioner's claim has no merit. The BOP
13 commenced his sentence on the earliest possible date that it could have under federal law—the
14 date on which he was originally sentenced by the federal judge. *See e.g., Rashid v. Quintana*, 372
15 Fed. App'x 260, 262 (3d Cir. 2010) (per curiam) ("a federal sentence cannot begin to run earlier
16 than on the date on which it is imposed."); *United States v. Flores*, 616 F.2d 840, 841 (5th Cir.
17 1980) ("[A] federal sentence cannot commence prior to the date it is pronounced, even if made
18 concurrent with a sentence already being served."). Petitioner's reliance on *Setser v. United States*,
19 566 U.S. 231 (2012) is misplaced as that case does not pertain to the when the BOP may deem a
20 sentence to have commenced under federal law.
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22
23 Petitioner does not object to the Magistrate Judge's recommendation his U.S.S.G. § 5G1.3
24 and GCT claims be denied. Therefore, this Court subjects this portion of the Report and
25 Recommendation to "clear error" review. Fed. R. Civ. P. 72(b), Advisory Committee Notes: 1983
Addition; *Batista v. Walker*, 94-CV-2826, 1995 WL 453299, at *1 (S.D.N.Y. July 31, 1995)

1 (Sotomayor, J.) (a district judge is permitted to adopt those sections of a magistrate judge’s report
2 to which no specific objection is made, so long as those sections are not facially erroneous.); *Cole*
3 *v. Yukins*, 7 Fed. App’x 354, 356 (6th Cir. 2001) (“The filing of vague, general, or conclusory
4 objections does not meet the requirement of specific objections and is tantamount to a complete
5 failure to object.”).

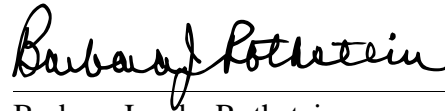
6 With respect to Petitioner’s U.S.S.G. § 5G1.3 claim, this claim was rendered moot by the
7 BOP’s recalculation of Petitioner’s federal sentence (after the federal judge amended the sentence)
8 because the BOP adjusted Petitioner’s 185-month term of imprisonment by the 534 days he served
9 in the state correctional facility from February 5, 2008 through July 22, 2009. With respect to the
10 GCT claim, commutation of GCT is governed by 18 U.S.C. § 3624(b), which provides, in relevant
11 part, that “a prisoner who is serving a term of imprisonment of more than 1 year other than a term
12 of imprisonment for the duration of the prisoner’s life, *may receive credit toward the service of*
13 *the prisoner’s sentence*, beyond the time served, of up to 54 days at the end of each year of the
14 prisoner’s term of imprisonment...” (emphasis added). In response to the Petition, the BOP
15 submitted a declaration from the Management Analyst at the DSCC that stated that Petitioner may
16 not receive GCT for the 534 days that were subtracted from his federal sentence as a result of the
17 amended judgment because those days are “not time served against his federal sentence.” Dkt. No.
18 16 Ex. 2, ¶ 19. It was not “clear error” for the Magistrate Judge to accept the BOP’s explanation,
19 particularly since Petitioner did not attempt to counter the explanation. *See also Lopez v. Terrell*,
20 654 F.3d 176, 183-185 (2d Cir. 2011) (deferring to the BOP’s interpretation of § 3624(b)); *Perez-*
21 *Olivo v. Chavez*, 394 F.3d 45, 53-54 (1st Cir. 2005) (holding that the BOP’s method of calculating
22 GCT based on “time served” is reasonable under § 3624(b)).
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IV. CONCLUSION

For the foregoing reasons, the Court HEREBY ADOPTS the Report and Recommendation of the Honorable Susan Paradise Baxter and DENIES the petition for writ of habeas corpus.

Dated this 6th day of December 2017.



Barbara Jacobs Rothstein
U.S. District Court Judge